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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC266

Atlantic Highly Migratory Species; Exempted Fishing, Scientific Research, Display, and Chartering Permits; Letters of Acknowledgment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent; request for comments.

SUMMARY: NMFS announces its intent to issue Exempted Fishing Permits (EFPs), Scientific Research Permits (SRPs), Display Permits, Letters of Acknowledgment (LOAs), and Chartering Permits for the collection of Atlantic Highly Migratory Species (HMS) in 2013. In general, EFPs and related permits would authorize collection of a limited number of tunas, swordfish, billfishes, and sharks from Federal waters in the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico for the purposes of scientific data collection and public display. Chartering Permits allow the collection of HMS on the high seas or in the Exclusive Economic Zone of other nations. Generally, EFPs and related permits will be valid from the date of issuance through December 31, 2013, unless otherwise specified, subject to the terms and conditions of individual permits.

DATES: Written comments on these activities received in response to this notice will be considered by NMFS when issuing EFPs and related permits and must be received on or before [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Comments may be submitted by any of the following methods:

- Email: [HMSEFP.2013@noaa.gov](mailto:HMSEFP.2013@noaa.gov). Include in the subject line the following identifier: 0648-XC266.
- Mail: Craig Cockrell, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.
- Fax: (301) 713-1917.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell or Michael Clark, phone: (301) 427-8503, fax: (301) 713-1917.

SUPPLEMENTARY INFORMATION: Issuance of EFPs and related permits are necessary for the collection of HMS for public display and scientific research that is exempt from regulations (e.g., fishing seasons, prohibited species, authorized gear, closed areas, and minimum sizes) that may prohibit the collection of live animals or biological samples. Collection for scientific research and display represents a small portion of the overall fishing mortality for HMS, and this mortality is counted against the quota of the species harvested, as appropriate and applicable. The terms and conditions of individual permits are unique; however, all permits will include reporting requirements, limit the number and species of HMS to be collected, and only authorize collection in Federal waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

EFPs and related permits are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Magnuson-Stevens Act) (16 U.S.C. 1801 et seq.) and/or the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 et seq.). Regulations at § 600.745 and § 635.32 govern scientific research activity, exempted fishing, chartering arrangements, and exempted educational activities with respect to Atlantic HMS. Since the Magnuson-Stevens Act does not consider scientific

research to be “fishing,” scientific research is exempt from this statute, and NMFS does not issue EFPs for bona fide research activities (e.g., research conducted from a research vessel and not a commercial or recreational fishing vessel) involving species that are only regulated under the Magnuson-Stevens Act (e.g., most species of sharks) and not under ATCA. NMFS generally does not consider recreational or commercial vessels bona fide research vessels. However, if the vessels have been contracted to only conduct research and not participate in any commercial or recreational fishing activities during that research, NMFS may consider those vessels as bona fide research platforms while conducting the specified research. As an example, NMFS has considered the recreational and commercial vessels contracted to conduct research under the Deepwater Horizon/BP oil spill as bona fide research platforms. NMFS requests copies of scientific research plans for these activities and indicates concurrence by issuing an LOA to researchers to indicate that the proposed activity meets the definition of research and is therefore exempt from regulation. Examples of research conducted under LOAs include tagging and releasing of sharks during bottom longline surveys to understand the distribution and seasonal abundance of different shark species, and collecting and sampling sharks caught during trawl surveys for life history studies.

Scientific research is not exempt from regulation under ATCA. NMFS issues SRPs for collection of species managed under this statute (e.g., tunas, swordfish, billfish, and some species of sharks), which authorize researchers to collect HMS from bona fide research vessels. One example of research conducted under SRPs consists of scientific surveys of HMS conducted from the NOAA research vessels. EFPs are issued to researchers collecting ATCA-managed species and conducting research from commercial

or recreational fishing vessels. NMFS regulations concerning the implantation or attachment of archival tags in Atlantic HMS require scientists to report their activities associated with these tags. Examples of research conducted under EFPs include deploying pop-up satellite archival tags on billfish, sharks, and tunas to determine migration patterns of these species; conducting billfish larval tows to determine billfish habitat use, life history, and population structure; and determining catch rates and gear characteristics of the swordfish buoy gear fishery.

NMFS is also seeking public comment on its intent to issue Display Permits for the collection of sharks and other HMS for public display in 2013. Collection of sharks and other HMS sought for public display in aquaria often involves collection when the commercial fishing seasons are closed, collection of otherwise prohibited species, and collection of fish below the minimum size. NMFS established a 60-metric ton (mt) whole weight (ww) (approximately 3,000 sharks) quota for the public display and research of sharks (combined) in the final Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). The public display and scientific research quotas for sandbar sharks are limited to 2.78 mt ww (2 mt dressed weight (dw)): 1.39 mt ww for public display and 1.39 mt ww for scientific research. Public display of dusky sharks is prohibited. These quotas have been analyzed in conjunction with other sources of mortality under Amendment 2 to the 2006 Consolidated HMS FMP, and NMFS has determined that harvesting this amount for public display will not have a significant impact on the stocks. The number of sharks harvested for display and research has remained under the annual 60-mt ww quota every year since establishment of the quota. In 2011, approximately 58 percent of the sharks authorized for public display and

scientific research purposes were actually harvested or discarded dead. Amendment 3 to the 2006 Consolidated HMS FMP also established a separate set-aside quota for smoothhound sharks (i.e., smooth dogfish and Florida smoothhounds) taken for research purposes, which would be in addition to the overall 60-mt ww quota for the public display and research of all sharks. However, the smoothhound shark research set-aside quota is not yet effective and their harvest resulting from research activities is not yet deducted from the set-aside quota for public display and research of sharks. NMFS will announce when such regulations become effective through a publication in the Federal Register.

For the coming year, NMFS is expecting EFP applications that would request some form of “compensation fishing” to offset the expenses for vessel owners participating in HMS research efforts. One of the applications would potentially investigate bycatch reduction research, specifically; bycatch “hotspots” identified during past research efforts in closed areas of the Atlantic Ocean, Gulf of Mexico and Caribbean Sea, including the Charleston Bump and Florida East Coast Closed Areas. As part of compensation fishing, vessels employed would be authorized to sell some of their catch to offset expenses. This research would test gear modifications and fishing techniques aimed to avoid incidental capture of non-target species. The Agency would provide additional opportunity for public comment on this research. Furthermore, NMFS would seek additional public comment, as necessary, on specific proposals where research is not being conducted solely from bona fide research vessels or fishing vessels specifically contracted to conduct scientific research.

NMFS is also aware of research activities that may be proposed in 2013 that would investigate bluefin tuna life history and migration patterns from pelagic longline vessels. This request would also potentially involve compensation fishing (i.e., the ability for vessels to sell additional bluefin tuna in excess of the retention limits) to offset costs of vessels participating in the research. Compensation fishing is only authorized if the researchers and vessels have been issued an EFP, consistent with § 600.745 regulations. As stated above, NMFS would seek additional public comments specifically on this type of activity, as necessary, before issuing an EFP if the vessels are not bona fide research vessels.

NMFS is also requesting comments on chartering permits considered for issuance in 2013 to U.S. vessels fishing for HMS while operating under chartering arrangements. NMFS has not issued any chartering permits since 2004. A chartering arrangement is a contract or agreement between a U.S. vessel owner and a foreign entity by which the control, use, or services of a vessel are secured for a period of time for fishing for Atlantic HMS. Before fishing under a chartering arrangement, the owner of the U.S. fishing vessel must apply for a Chartering Permit. The vessel chartering regulations can be found at § 635.5(a)(4) and § 635.32 (e).

In 2012, NMFS issued an EFP to scientists researching the methods required to successfully culture bluefin and yellowfin tuna in the United States. Due to the limited number of specimens authorized and the fishing gear employed, the Agency did not seek additional comment because the research was within the scope of the 2012 EFP Notice of Intent. Up to six, 24-27" yellowfin and bluefin tuna were collected on rod and reel gear and then transported fish to land-based holding tanks where they are kept through their

breeding life. If the scientists are successful in breeding yellowfin and bluefin tuna, the research would ultimately provide larvae and juveniles for an array of investigations. No release of fish from the holding tanks is authorized under the permit. The Agency expects to receive additional applications for this type of research in 2013.

In addition, Amendment 2 to the 2006 Consolidated HMS FMP implemented a shark research fishery. This research fishery is conducted under the auspices of the exempted fishing program. Research fishery permit holders assist NMFS in collecting valuable shark life history data and data for future shark stock assessments. Fishermen must fill out an application for a shark research permit under the exempted fishing program to participate in the shark research fishery. Shark research fishery participants are subject to 100-percent observer coverage in addition to other terms and conditions. A Federal Register notice describing the objectives for the shark research fishery in 2013 is expected to publish in the near future.

The authorized number of species for 2012, as well as the number of specimens collected in 2011, is summarized in Table 1. The number of specimens collected in 2012 will be available when all 2012 interim and annual reports are submitted to NMFS. In 2011, the number of specimens collected was less than the number of authorized specimens for most permit types, with the exception of the number of larvae collected under billfish EFPs, and sharks taken under SRPs and Display permits. It is difficult to control the quantity of larvae that may be caught when sampling fish larvae. However, the impacts of these collections on fish populations are not expected to be significant given the high level of natural mortality of fish larvae. As for sharks taken under EFPs, SRPs, and Display Permits, 3,178 of the sharks taken were Atlantic sharpnose sharks

collected during trips using longline gear; it is also difficult to control the number and species of animals caught when using this gear type. However, as Atlantic sharpnose sharks were not found to be overfished nor have overfishing occurring during its most recent stock assessment in 2007, these collections are not expected to have any impacts on Atlantic sharpnose populations.

In all cases, mortality associated with an EFP, SRP, Display Permit, or LOA (except for larvae) is counted against the appropriate quota. NMFS issued a total of 32 EFPs, SRPs, Display Permits, and LOAs in 2011 for the collection of HMS. As of October 31, 2012, NMFS has issued a total of 43 EFPs, SRPs, Display Permits, and LOAs. These do not include permits that were issued for research related to the Deepwater Horizon/BP oil spill in the Gulf of Mexico. In 2012, three permits were issued for research related to the oil spill in the Gulf of Mexico.

Table 1. Summary of HMS Exempted Permits Issued in 2011 and 2012. (“HMS” refers to multiple species being collected under a given permit type.)

Permit Type	2011					2012		
	Permits Issued**	Authorized Fish (Num)	Authorized Larvae (Num)	Fish Kept/Discarded Dead (Num)	Larvae Kept (Num)	Permits Issued**	Authorized Fish (Num)	Authorized Larvae (Num)
EFP								
HMS	2	273	0	34	0	3	163	0
Shark	8	1,377	0	2,356†	0	10	1,118	0
Tuna	5	695	0	6	0	5	687	0
Billfish	2	40	1,000	0	2,243	1	20	1,000

SRP								
HMS	1	83	0	80	0	4	83	0
Shark	3	1,365	0	1,484†	0	4	2,160	0
Tuna	1	110	0	0	0	3	610	2000
Display								
HMS	2	124	0	6	0	2	126	0
Shark	3	87	0	178†	0	4	115	0
Total	27	4,154	1,000	4,485	2,243	36	5,082	3,000
LOA*								
Shark	5	5,367	0	699	0	7	2,140	0

\*LOAs are issued for bona fide scientific research activities involving non-ATCA managed species (e.g., most species of sharks). Collections made under an LOA are not authorized; rather this estimated harvest for research is acknowledged by NMFS. Permittees are encouraged to report all fishing activities in a timely manner.

\*\*2011 & 2012 permits issued listed in Table 1 do not include permits issued solely for research related to the Deepwater Horizon/BP oil spill research in the Gulf of Mexico.

†All additional collections above the authorized levels were due to incidentally caught Atlantic sharpnose sharks

Final decisions on the issuance of any EFPs, SRPs, Display Permits, and Chartering Permits will depend on the submission of all required information about the proposed activities, NMFS review of public comments received on this notice, an applicant's reporting history on past permits issued, any prior violations of marine resource laws administered by NOAA, consistency with relevant NEPA documents, and any consultations with appropriate Regional Fishery Management Councils, states, or Federal agencies. NMFS does not anticipate any significant environmental impacts from

the issuance of these EFPs as assessed in the 1999 FMP, Amendment 2 to the 2006 Consolidated HMS FMP, 2011 Bluefin Tuna Specifications, and 2012 Swordfish Specifications

Authority: 16 U.S.C. § 971 et seq. and 16 U.S.C. § 1801 et seq.

Dated: November 14, 2012

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